

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Person To Contact:

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CC:PSI:B04

PLR-106456-06

Date: DECEMBER 05, 2006

### Legend:

Year 1        =  
Wife         =  
Husband     =  
Trust 1      =

Trust 2      =

Trust 3      =

Trust 4      =

Attorney     =  
Law Firm     =

a                =  
Company        =  
y                =

Dear                :

This is in response to a letter from your authorized representative dated January 27, 2006, and subsequent submissions, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Husband's generation-skipping transfer (GST) exemption to transfers to four trusts.

The facts and representations submitted are summarized as follows: In Year 1, on the advice of Attorney, Wife established four substantially identical irrevocable trusts (Trusts 1, 2, 3, and 4), one trust for the benefit of each of the spouses' four children and that child's issue. Each child and child's issue had a right to withdraw principal, not to exceed y, from the child's trust. On the same date, Wife transferred a shares of stock in a closely-held corporation (Company) to each trust. The reported value of the stock transfers to the four trusts exceeded the total value of the withdrawal rights granted to the grandchildren.

Attorney prepared and filed Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) to report the Year 1 gifts to Trusts 1, 2, 3, and 4. Husband and Wife elected gift-splitting for the gifts made in Year 1. Attorney allocated Husband's and Wife's GST exemptions to that amount of the stock transfers to each trust attributable to the withdrawal rights granted to each grandchild. However, Attorney failed to allocate Husband's and Wife's GST exemptions to that amount of the stock transfers that exceeded the withdrawal rights of the grandchildren.

Subsequent to filing the Form 709, Attorney advised Husband and Wife that Husband's and Wife's GST exemptions should have been allocated to the entire value of the stock transferred to each of the four trusts, not just to the amount of the stock transfers attributable to the withdrawal rights.

Husband has requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate his GST exemption to the transfers made to Trusts 1, 2, 3, and 4 in Year 1.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under section 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Pursuant to § 2513, Husband and Wife consented to split the gifts in Year 1. Husband and Wife are treated as the transferors for GST purposes of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. Husband is granted an extension of time of 60 days from the date of this letter to allocate his available GST exemption to the Year 1 gifts to Trusts 1, 2, 3, and 4. The allocations will be effective as of the date of the transfers to Trusts 1, 2, 3, and 4. The inclusion ratio of Trusts 1, 2, 3, and 4 will be determined based on the values of the transfers to Trusts 1, 2, 3, and 4 as determined for federal gift tax purposes and the amount of exemption allocated to the trusts. Further, the value of the transferred shares as of the date of the original transfers to Trusts 1, 2, 3, and 4 will be used in determining the amount of Husband's GST exemption to be

allocated to the trusts.

The allocation should be made on a supplemental Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically we are not ruling on whether Trusts 1, 2, 3, and 4 will have zero inclusion ratios as a result of Husband's allocation of GST exemption to the Year 1 transfers to the trusts.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter